

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BOBBY DICKERSON,

Plaintiff,

v.

UNKNOWN,

Defendant.

Case No. 1:24-cv-00164-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO  
RANDOMLY ASSIGN DISTRICT JUDGE TO  
ACTION

FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION, WITH PREJUDICE, FOR  
FAILURE TO STATE A CLAIM, FAILURE  
TO OBEY COURT ORDER, AND FAILURE  
TO PROSECUTE

(ECF No. 4)

**FOURTEEN (14) DAY DEADLINE**

**I. Background**

Plaintiff Bobby Dickerson (“Plaintiff”) is a county jail inmate proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983.

On February 6, 2024, the Court issued a screening order granting Plaintiff leave to file a first amended complaint or a notice of voluntary dismissal within thirty (30) days. (ECF No. 4.) The Court expressly warned Plaintiff that the failure to comply with the Court’s order would result in a recommendation for dismissal of this action, with prejudice. (*Id.* at 3.) Plaintiff failed to file an amended complaint or otherwise communicate with the Court, and the deadline to do so has expired.

1       **II.     Failure to State a Claim**

2           **A.     Screening Requirement**

3       The Court is required to screen complaints brought by prisoners seeking relief against a  
4       governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.  
5       § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous  
6       or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary  
7       relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b).

8       A complaint must contain "a short and plain statement of the claim showing that the  
9       pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
10      required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
11      conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Bell*  
12      *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as  
13      true, courts "are not required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*,  
14      572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

15      To survive screening, Plaintiff's claims must be facially plausible, which requires  
16      sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable  
17      for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret*  
18      *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully  
19      is not sufficient, and mere consistency with liability falls short of satisfying the plausibility  
20      standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

21           **B.     Discussion**

22      In preparing to screen the complaint, the Court noted that the complaint is missing several  
23      pages, especially the first two pages of the complaint form, which would have included the  
24      caption and the list of the defendants in this action. (*See* ECF No. 1.)

25      Because the complaint is missing pages, it does not have a caption that contains the names  
26      of the defendants discussed in the body of the complaint, in violation of Federal Rule of Civil  
27      Procedure 10(a). *See* Fed. R. Civ. P. 10(a) (Rule 10(a) requires that plaintiffs include the names  
28      of all parties in the caption of the complaint). The Court cannot have the complaint served on any

of the parties discussed in the body of the Complaint. *See Soto v. Bd. of Prison Term*, No. CIV S-06-2502 RRB DAD P, 2007 WL 2947573, at \*2 (E.D. Cal. Oct. 9, 2007) (The Court cannot order service of the Complaint without the names of the parties included in the caption of the Complaint). Rule 10 of the Federal Rules of Civil Procedure requires, among other things, that a complaint (a) state the names of “all the parties” in the caption; and (b) state a party’s claims in sequentially “numbered paragraphs, each limited as far as practicable to a single set of circumstances.” Fed. R. Civ. P. 10. Plaintiff’s complaint is subject to dismissal on this basis alone. *See Martinez v. Davey*, No. 16-cv-1658-AWI-MJS (PC), 2018 WL 898153, at \*5 (E.D. Cal. Feb. 15, 2018) (dismissing, among other reasons, because “Plaintiff makes allegations against numerous non-party individuals not named in the caption of the complaint” in violation of Rule 10(a)).

Accordingly, as filed, Plaintiff’s complaint fails to state a cognizable claim for relief. Plaintiff was granted leave to amend his complaint to cure this deficiency, and he did not do so.

### **III. Failure to Prosecute and Failure to Obey a Court Order**

#### **A. Legal Standard**

Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “[i]n the exercise of that power they may impose sanctions including, where appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987) (dismissal for failure to comply with court order).

In determining whether to dismiss an action, the Court must consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
2 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779  
3 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

4 **B. Discussion**

5 Here, Plaintiff's first amended complaint is overdue, and he has failed to comply with the  
6 Court's order. The Court cannot effectively manage its docket if Plaintiff ceases litigating his  
7 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

8 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a  
9 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.  
10 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against  
11 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d  
12 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party whose  
13 responsibility it is to move a case toward disposition on the merits but whose conduct impedes  
14 progress in that direction," which is the case here. *In re Phenylpropanolamine (PPA) Products*  
15 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

16 Finally, the Court's warning to a party that failure to obey the court's order will result in  
17 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262;  
18 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court's December 20, 2023 screening  
19 order expressly warned Plaintiff that his failure to file an amended complaint would result in a  
20 recommendation of dismissal of this action, with prejudice, for failure to obey a court order and  
21 for failure to state a claim. (ECF No. 4, p. 3.) Thus, Plaintiff had adequate warning that dismissal  
22 could result from his noncompliance.

23 Additionally, at this stage in the proceedings there is little available to the Court that  
24 would constitute a satisfactory lesser sanction while protecting the Court from further  
25 unnecessary expenditure of its scarce resources. As Plaintiff is proceeding *in forma pauperis* in  
26 this action, it appears that monetary sanctions will be of little use and the preclusion of evidence  
27 or witnesses is likely to have no effect given that Plaintiff has ceased litigating his case.

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#### **IV. Conclusion and Recommendation**

Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a district judge to this action.

Furthermore, the Court finds that dismissal is the appropriate sanction and HEREBY RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim pursuant to 28 U.S.C. § 1915A, for failure to obey a court order, and for Plaintiff's failure to prosecute this action.

These Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendation, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **March 22, 2024**

/s/ *Barbara A. McAuliffe*  
UNITED STATES MAGISTRATE JUDGE